

TFW



8/8/08

Page 1 of 19

**TELEPHONE INTERVIEW SUMMARY RECORD**

**In the United States Patent and Trademark Office**

Application No: 10/780,831  
Application Filed: February 18, 2004  
Applicant: Roger D. Hewson  
Title: Developing the Twelve Cognitive Functions of Individuals  
Examiner: Nikolai A. Gishnock

Mailed: August 8, 2008, at South Casco, Maine, 04077

The following is the Applicant's Telephone Interview Summary Record covering the telephone interview with Examiners Nikolai Gishnock and Kathleen Mosser on Thursday, July 24<sup>th</sup>, 2008 at 2 pm in accordance with the Applicants Interview Agenda faxed to Examiner Gishnock on Tuesday, July 22, 2008.

1. An exact copy of the Examiners' Interview Summary Record dated July 30, 2008, starts on Page 2. This will serve as a reference for the Applicant's comments.
2. The Applicant's additions and comments summarizing the interview also start on Page 2.
3. An exact copy of the Applicant's Telephone Interview Agenda is provided starting on Page 6. The Applicant requests that this Agenda be part of the official record of this Interview to: (a) establish that an Agenda was provided by the Applicant as required; (b) provide the required reference for the Applicant's comments in the Interview Summary Record; and (c) provide consistency with the previous Interview Summary Record of December 20, 2007, which included a copy of the corresponding Agenda by the Applicant.
4. The Conclusion of this Record starts on Page 19, It respectfully requests that the Interview Agenda provided by the Applicant, and the details of this Interview Summary Record, be considered in the next Office Action in response to the Applicant's June 2, 2008 Amendment.

**Applicant's Interview Summary Record**

**1. The following is an exact copy of the Examiners' Interview Summary Record dated 07-30-2008. This is provided as a reference for Applicant's comments:**

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant discussed his invention in terms of MPEP 2144, and maintained that sufficient rationale of obviousness was not presented in the final office action. Applicant further summarized the 10 years of trial and error experimentation needed to develop the instant invention, during which he made observations about his employees and their work habits, and his certification as an authorized MTBI practitioner, which provided him insight on the limitations of the Myers-Briggs system. Applicant suggested that his invention was not obvious over the prior art Wood because other MTBI practitioners were resistant to switching to a new system. Applicant also stated that utilizing the specific twelve and only twelve cognitive functions of the instant invention distinguished over Wood because there are millions of combinations of the eighty-three-plus personality traits described in Wood, when taken twelve at a time. Examiners stated that they felt the rationale of design choice of a particular twelve of the functions of Wood, and assigning particular names and groupings, was sufficiently expressed in the final office action. Examiners further stated that in order to overcome a finding of obviousness over the prior art, Applicant must articulate why Examiner's rationale is incorrect in cooperation with a showing of facts or evidence supporting the articulation. Examiners further expressed concern that Applicant's experimentation was well within the realm of reasonable experimentation, such that a person of ordinary skill in the art at the time would easily be able to select a set of cognitive functions that he felt would cover the spectrum of personality variations, in light of the knowledge gleaned from the prior art (e.g. Wood, MBTI, Carl Jung, etc.) Applicant also asked that the Examiners delay action on amendments entered on RCE. Examiners stated they could not guarantee a specific grace period for Applicant's filing of a supplemental amendment, in light of office workflow requirements, but would expect the filing of such an amendment. No agreement on patentability was reached.

**2. The following is the Applicant's further summary of the discussion in the interview.**

- (a) Examiners' Record.** The Applicant accepts the Examiners' Record as provided above, subject to the following additions and comments.
- (b) Sample Claim 24.** With reference to Item 1 on the Agenda requesting approval of Sample Claim 24, this item was not considered by the Examiners, presumably with the rationale mentioned above of mere "design choice" making this invention obvious.
- (c) Sample Claim 24 Revisions.** With reference to Item 2 on the Agenda regarding suggestions to make Sample Claim 24 acceptable, this was likewise was not considered by the Examiners, presumably on the rationale mentioned above of mere "design choice" making this invention obvious.

- (d) Applicant's Request for Explicit Rationale.** With reference to Item 3 on the Agenda regarding the Applicant's request for an explanation of the "explicit rationale" for this non-approval, the Applicant repeatedly requested that this "rationale" be provided in more explicit, fact-based, and objective terms than the subjective "design choice" noted by the Examiners.

(This explicit rationale is required by MPEP 2141-III that states: *"The key to any rejection under 35 USC 103 is the clear articulation of the reason(s) why the claimed invention would be obvious."* This MPEP article further states: *"[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."* )

(MPEP 2143.01-IV further states: *"Mere statement that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish obviousness."* (etc.) )

The applicant respectfully stated in the interview that he considers that articulated reasoning with rational underpinning was not provided in the Final Action of April 4, 2008, and that this lack of knowledge of the rationale hindered his ability to respond appropriately to the conclusion of obviousness.

- (e) Examiners' Statement of Design Choice Rationale.** With reference to the Examiners' record above, the: *"Examiner's stated they felt that the rationale of design choice of a particular twelve of the functions of Wood, and assigning particular names and groupings, was sufficiently expressed in the final office action."* (The words *"design consideration"* appear only once in this Final Office Action, in Item 11, page 11 of this Action, and the words *"design choice"* do not appear in this Final Office Action Rejection of April 4, 2008. This *"design consideration"* reference applied solely to Dependent Claim 21, to one of nine steps in Independent Claim 24, and to one of thirteen steps in Independent Claim 27.)

The Applicant stated that, in his opinion, the Final Office Action did not explicitly state that, or explain how, this rationale applied to the invention *"as a whole,"* and *"with all claim limitations."* (Specifically, this *"design consideration"* rationale is not referred to in reference to the selection of the exact twelve cognitive functions, or the groupings of the two columns with six specific functions in each column, which are novel elements of this invention.)

The Applicant further requested explicit examples of *"Legal Precedent as Source of Supporting Rationales,"* as required under MPEP 2144.04, and explicit MPEP guideline references used in this obviousness rejection.

- (f) **Examiners' Request for Articulation as to Why Their Rationale is Incorrect.** Examiners further stated *"that in order to overcome a finding of obviousness over the prior art, Applicant must articulate why Examiner's rationale is incorrect in cooperation with a showing of facts or evidence supporting the allegation."* The Applicant respectfully requested the detailing of an explicit rationale (in accordance with the requirements of MPEP 2141-III quoted above) rather than the overly broad and vague reliance on mere "design choice" as evidence of obviousness of this very complex invention.

This explicit rationale was requested to allow the Applicant to specifically respond to the Examiners' individual and specific evidences of obviousness. (Evidence would be helpful explaining why the patents, cited in previous Office Actions and in this interview, of Buffington, Bouchard, and Cuttler were not found obvious and disallowed for this same "design choice" rationale.)

- (g) **Examiners' Rejection of Research Validity.** The *"Examiners further expressed concern that Applicant's experimentation was well within the realm of reasonable experimentation, such that a person of ordinary skill in the art at the time would easily be able to select a set of cognitive functions that he felt would cover the spectrum of personality variations,..."*

(The above words....*"would cover the spectrum of personality variations...."* infer the requirement of prior knowledge of this invention to select the "spectrum" of twelve cognitive functions of this invention, which establishes hindsight bias.)

Applicant requested an explanation of the explicit rationale of how a person of ordinary skill would achieve this result *"without prior knowledge"* of this invention's novel structure *"covering the full spectrum of cognitive functions"* as defined in the Application.

Further, the Applicant detailed his exceptional experience, successes, and awards, and his extremely extensive 10-year research work in this field. (This qualifies him as an "expert" in this field, and his research the work of an expert, not just one of ordinary skill in the art.)

- (h) **Examiners' Statements Regarding this Type of Invention.** There was reference by the Examiners in this interview to Buffington having four categories, Wood having sixteen categories, the question of what the Examiners would do *"if someone came in with thirteen"* categories, and *"others have tried to patent this type of thing."*

(These statements were deemed by the Applicant to be a general disposition by the Examiners

against the general "type" or nature of the Applicant's invention with twelve cognitive functions, without addressing the unique and novel features of this specific invention.)

- (i) **Request for Examiners' Suggestions.** With reference to Item 4 of the Agenda requesting suggestions from the Examiners about additional explanations, evidence, an/or arguments that would be beneficial to establishing patentability of this invention, the Applicant appreciates the suggestions to: (i) provide evidence of intuitive "inventive sparks" that were part of the development of this invention, and (ii) explain "why someone of ordinary skill in the art could not have come up with this." (The Applicant has done so in his Application of February 18, 2004, his Amendment #1 of December 31, 2007, and his Amendment #2 of June 2, 2008, and will do so in more detail in subsequent Amendments.)
- (j) **Decision not to file a Supplemental Amendment.** The Applicant will not be filing a Supplemental Amendment at this time due the time constraints cited by the Examiner.

3. The following is an exact copy of the Applicant's Telephone Interview Agenda dated July 22, 2008.



7/22/08 Page 1 of 13

**TELEPHONE INTERVIEW AGENDA**

**In the United States Patent and Trademark Office**

Application No: 10/780,831

Application Filed: February 18, 2004

Applicant: Roger Hewson

Title: Developing the Twelve Cognitive Functions of Individuals

Examiner: Nikolai A. Gishnock

Faxed: July 22, 2008

To Fax Number: 571-273-1420

At: South Casco, Maine, 04077

The Applicant appreciates the opportunity for a telephone interview with the Examiners Gishnock and Mosser on Thursday, July 24, 2008, at 2 PM. This will help clarify the explicit rationale for the rejection of the Claims as presented in the Applicant's Amendment #1 of December 31, 2007, and as rejected in the Final Action of April 4, 2008, hereinafter referred to as OA #2.

The Applicant considers that his interview will be most beneficial in guiding his appropriate response to the objections and rejections raised in this Final Action. At present, the Applicant has been unable to ascertain, from the wording of the Final Action, the exact rationale for these objections and rejections taken "*as a whole*," with "*all the claim limitations*," and "*without hindsight bias*" in accordance with the recently revised MPEP guidelines.

**AGENDA FOR TELEPHONE INTERVIEW**

1. The Applicant respectfully requests approval of sample Claim 24, as provided on page 4 herein, as unobvious and patentable. This Claim is virtually identical to sample Claim 19 reviewed in the last Interview recorded December 20, 2007, with Examiners Gishnock and Laneau, which received approval in concept with the words "seems to comply"....with 35 USC 101 and 112.

Minor amendments have been made herein to clarify the wording of this Claim 24 indicated by underlining additions and striking out deletions. This Claim 24 with similar minor amendments is also included in Amendment # 2 by the Applicant as recorded on June 2, 2008.

The Applicant's rationale for the approval of this sample Claim 24 is provided on page 8 herein, which details the Applicant's conclusion that this claim is nonobvious and patentable.

Also included herein is a brief statement of the extensive research behind this invention, which merits consideration in light of MPEP 716.05 which states: *"the five or six years of research that preceded the claimed invention....is entitled to fair evidentiary weight."*

2. If this Claim is not approved as presented herein, the Applicant respectfully requests the suggestion of revisions to this Claim to make it acceptable.
3. If this claim is not approved as presented, or with suggested revisions, the Applicant respectfully requests an explanation of the "explicit rationale" for this non-approval in the light of the "rationale" for approval provided by the Applicant herein.

This further explanation would to allow the Applicant's more appropriate and detailed response to this non-approval in the form of a Supplemental Amendment, within the extended time allowed, to replace the already submitted Amendment #2 recorded by the USPTO on June 2, 2008.

The Applicant has responded fully to the objections and rejections raised in the Final Action dated April 4, 2008, in his Amendment #2 noted above. However, the Applicant respectfully submits that he was unable to ascertain an *"explicit rationale"* for the rejection of the Independent Claims *"as a whole"*, with *"all the claim limitations,"* and *"without hindsight bias,"* in this Final Action. This *"explicit fact-based rationale"* is needed by the Applicant to respond effectively to this Final Action in the current Request for Continued Examination (RCE) process.

MPEP 2141-V states, *"The office action should clearly communicate the office's findings and conclusions, and articulate how the conclusions are supported by the findings."*

4. The Applicant further respectfully requests suggestions from the Examiners about what additional explanations, evidence, and/or arguments would be beneficial to establish the patentability of this invention.

The Applicant greatly appreciates the opportunity for this interview, and considers that it will be most useful in resolving the outstanding issues of this Application.

Signed Roger D. Hewson Date 7/22/08

Roger D. Hewson

22 Hewson Rd

P.O. Box 38

South Casco, ME 04077

Weekday Tel: 207-655-6000

Evening Tel: 207-655-3658

Fax: 207-655-6006